

AMENDED IN SENATE JUNE 26, 1996
AMENDED IN ASSEMBLY JANUARY 11, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1651

Introduced by Assembly Member Richter

February 24, 1995

An act to *amend Section 25360 of, to add Section 25360.1 to, and to add Article 4.5 (commencing with Section 25346) to Chapter 6.8 of Division 20 of, the Health and Safety Code, relating to hazardous substances.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1651, as amended, Richter. Hazardous substances: ~~site mitigation program oversight~~: cost recovery.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, authorizes the Department of Toxic Substances Control to expend the money in the Hazardous Waste Control Account in the General Fund, upon appropriation by the Legislature, to pay for, among other things, removal and remedial actions related to the release of hazardous substances. Existing law authorizes the Attorney General to recover from the liable person, as defined, the costs incurred and payable from the account or the Hazardous Substance Cleanup Fund for a removal or remedial action to a hazardous substance release. *Under existing law, the amount of any costs which may be recovered under those provisions for a remedial or removal action paid from the Hazardous*

Substance Cleanup Fund is required to include the amount paid from that fund and interest on that amount calculated at a rate equal to the interest rate of the bonds sold pursuant to the Hazardous Substance Cleanup Bond Act of 1984. Existing law also imposes liability upon those liable persons for administrative costs in an amount equal to 10% of the reasonable cost actually incurred, or \$500, whichever is greater. Existing law requires the State Board of Equalization to assess a fee of \$8,000 upon a potentially responsible party for oversight of a preliminary endangerment assessment by the department.

This bill would make a statement of legislative intent, would define terms, and would require the department to ~~adopt regulations and take specified actions for purposes of clarifying and improving the recovery of oversight costs expended pursuant to the act and the federal Comprehensive Environmental Response Compensation and Liability Act of 1980~~ *develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute to all responsible parties.* The bill would require the department to take specified actions to improve the tracking of ~~direct oversight costs and~~ indirect oversight costs, as defined, to establish rates for indirect oversight costs which are specific to the ~~site mitigation~~ *each program; and to review the department's cost recovery policies at least once every 2 years, and to adopt regulations specifying consistent criteria for assessing administrative costs.* The bill would also require the department to adopt specified procedures with regard to ~~potentially responsible parties performing hazardous substance release site investigations and cleanups,~~ including a meet and confer process, to adopt a billing system, as prescribed, for oversight costs, and to take specified actions with regard to uncollectible accounts.

The department would be required to submit a report to the Legislature, by June 1, 1998, regarding the implementation of those requirements ~~and recommendations for increasing the cost effectiveness of the department's site mitigation program.~~

The bill would instead provide that the amount of any remedial or removal action costs that may be recovered for a remedial or removal action paid from the Hazardous Substance Cleanup Fund includes interest on any amount paid from the fund calculated at a rate equal to the interest rate of the bonds sold pursuant to the bond act and that the interest on any amount paid from the state account or the Site Remediation Account shall be calculated at the rate of return earned on investment in the Surplus Money Investment Fund. The bill would also subject any monetary obligation to the department pursuant to the hazardous waste control laws or the hazardous substance account act to interest from the date of the demand at the same rate of return earned on investment in the Surplus Money Investment Fund. The bill would delete the provision specifying the liability for administrative costs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 4.5 (commencing with Section
2 25346) is added to Chapter 6.8 of Division 20 of the Health
3 and Safety Code, to read:

4
5 Article 4.5. ~~Site Mitigation~~ Department Oversight
6 Costs
7

8 25346. The Legislature hereby finds and declares all
9 of the following:

10 (a) To enhance cooperation between the department
11 and the regulated community, and to reduce the state's
12 costs associated with the oversight of ~~site mitigation~~
13 *cleanup* efforts, the costs of the associated cost recovery
14 program and the corresponding costs to the responsible
15 parties involved, the oversight program should be
16 administered in an efficient, responsible, and
17 accountable manner.

18 (b) According to information provided to the
19 Legislature, the department has collected more than

1 seventy-one million dollars (\$71,000,000) since the cost
2 recovery effort was begun in the early 1980s and there is
3 approximately seventy million dollars (\$70,000,000) to
4 eighty million dollars (\$80,000,000) in outstanding
5 receivables for disputed site cleanup oversight costs. The
6 information provided to the Legislature indicates that
7 potentially responsible parties have complained that the
8 department's oversight costs have been unpredictable,
9 unsubstantiated, and exceedingly high.

10 (c) Disputes with potentially responsible parties over
11 the reasonableness of oversight costs have been a major
12 factor in the difficulty that the department has
13 experienced in conducting cost recovery. Disputes of that
14 kind substantially increase the cost of state operations and
15 the cost of doing business for the private sector, leading
16 to extended negotiations and litigation. The redirection
17 of resources by both parties in attempting to resolve those
18 differences most likely inhibit cleanup efforts and affect
19 the ability of the parties to work together cooperatively,
20 thereby exacerbating the costs associated with the ~~site~~
21 ~~mitigation~~ cleanups. *Disputes would be reduced by*
22 *clarifying current law by providing definitions of direct*
23 *and indirect oversight costs.* Further, these high costs
24 affect the competitiveness of California businesses in
25 national and global business environments.

26 25346.1. For purposes of this article, the following
27 terms have the following meaning:

28 (a) "Direct oversight costs" means the costs to the
29 department of overseeing a ~~remediation~~ *cleanup* action
30 that can be specifically attributed to a particular cost
31 objective, including, but not limited to, sites, facilities,
32 and activities.

33 (b) "Indirect oversight costs" means the costs to the
34 ~~department of overseeing a remediation action which are~~
35 ~~incurred for a common or joint purpose benefiting more~~
36 ~~than one cost objective and which are not readily~~
37 ~~assignable to the cost objective that is specifically~~
38 ~~benefited.~~

39 (c) ~~"Operating expenses and equipment" means all~~
40 ~~nonpersonnel department operating expenses;~~

1 including, but not limited to, communications, utilities,
2 insurance, vehicle use, equipment, printing, postage,
3 facility leasing, general operating supplies, and office
4 machine maintenance.

5 (d) “Site mitigation program” means the activities
6 taken by the department pursuant to this chapter and
7 under the federal act.

8 (e) *department of activity that is of a common or joint*
9 *purpose benefiting more than one cost objective and not*
10 *readily assignable to a single case objective.*

11 (c) “Pro rata” means the general administrative costs
12 expended by central service agencies to provide
13 centralized services to the department.

14 25346.2. (a) The department shall adopt regulations
15 and take the actions specified in this article for purposes
16 of clarifying and improving the recovery of oversight
17 costs expended pursuant to this chapter and under the
18 federal act.

19 (b) The department shall adopt regulations specifying
20 consistent criteria for assessing the administrative costs
21 specified in subdivision (b) of Section 25360.

22 25346.3. The department shall take all of the following
23 actions to improve the tracking of direct oversight costs:

24 (a) Implement accurate work timekeeping and the
25 correct identification of direct time spent, including
26 making department staff timesheets accurate to the
27 nearest quarter of an hour.

28 (2) Require that timesheets shall be completed daily
29 and that supervisors take appropriate action to ensure
30 that department staff are recording work time daily.

31 (3) Modify the daily logs so that detailed descriptions
32 can be maintained for all work performed by department
33 staff, and so that the amount of detail in the daily logs is
34 of a sufficient level to allow for a meaningful audit of the
35 department’s activities.

36 (4) Make available copies of department staff
37 timesheets and daily logs to responsible parties, on a
38 monthly basis, upon request.

39 (5) Allow potentially responsible parties to comment
40 on the level and sufficiency of detail in the daily logs.

~~(6) Require daily logs to be routinely and systematically reviewed by supervisory personnel to ensure adequate detail.~~

~~(7) Train department staff on the completion of daily logs to ensure that the logs accurately reflect the activity at the site or facility.~~

~~(8) Require department staff who record direct activities, and their supervisors, to receive continuing and frequent training, along with a comprehensive explanation of the effect that timesheet hours have on the operation of potentially responsible parties and the state. centralized services to state agencies, as defined in the State Administrative Manual.~~

25346.2. The department shall develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute the statement to all responsible parties.

25346.4. The department shall take the following actions with regard to the tracking of indirect oversight costs:

(a) Ensure that pro rata costs are allocated appropriately to all departmental activities, so that the ~~site mitigation~~ department's program will only bear these pro rata costs in proportion to the benefits received by potentially responsible parties.

(b) Routinely include operating expenses in the indirect oversight costs and allocate those expenses using processes that ensure that the ~~site mitigation~~ department's program only bears indirect oversight costs in proportion to the benefits received by potentially responsible parties.

~~(c) Include, in the calculation of indirect oversight costs, the costs of general administration, performance-based budget and strategic planning, guidance, policy, and procedure, training, development and delivery, training received, program evaluation and audit, legislation review and development, case development and cost recovery, first and second-level~~

1 ~~general supervision, and technical officer services, but~~
2 ~~exclude~~

3 (c) *Exclude*, from indirect oversight costs, the costs of
4 grant development and administration, fee
5 administration, contract development and
6 administration, and public and governmental inquiries.

7 25346.5. (a) The department shall establish rates for
8 indirect oversight costs that are specific to ~~the site~~
9 ~~mitigation~~ *each* program and shall review and update the
10 indirect cost rates based upon increases or decreases in
11 the amounts of grants received by the department,
12 department reorganizations, and other relevant factors,
13 but not less than once every six months, based upon the
14 previous 12 months of expenditure data. The department
15 shall apply the indirect oversight cost rates prospectively
16 and shall not make retroactive adjustments in those rates.

17 (b) The department shall review the department's
18 cost recovery policies at least once every two years.

19 25346.6. The department shall take the following
20 actions with regard to the department's relationship with
21 ~~potentially responsible parties:~~ *the parties who are*
22 *performing the investigation and cleanup of the*
23 *hazardous substance release site.*

24 (a) Adopt procedures to improve communication,
25 facilitate the exchange of ideas, eliminate surprises, and
26 allow better financial planning by the department and
27 potentially responsible parties, including a meet and
28 confer process which includes, but is not limited to, all of
29 the following:

30 (1) An estimate of the cost of site remediation by the
31 department for the next phase of the site remediation
32 activity, including a list of estimated personnel labor
33 rates.

34 (2) An estimate of the total hours that the department
35 expects the department staff to incur in the next phase of
36 the site mitigation process, to the extent that the
37 department can project its time and costs in advance.
38 That estimate shall include the projected hours of the
39 project manager, and the costs of public participation,
40 legal counsel, and technical consultations.

(3) A discussion of the schedule for the remediation action, including a thorough review of the services that the department expects to provide, deliverables, timeframes, expectations of both parties, a process for status reporting by both parties, systematic billing at least once every three months by the department, and an agreement on how the work plan will be modified, and how the costs will be estimated.

(b) Develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and the availability of program guidance and policies, which shall be distributed to all potentially responsible parties before any site remediation commences, as part of the meet and confer process.

(c) Review all informal guidance documents for the cost recovery program, including fee bulletins, management memos, policies, and procedures, and review and update those documents, as appropriate.

(d) Establish a procedure, when there is a change of project manager for a remediation action, to provide for a detailed status briefing to identify the highlights of past work and identify the current areas of agreement and disagreement among the parties.

25346.7. The department shall adopt a billing system for oversight costs which meets all of the following criteria:

~~(a) Invoices shall be issued quarterly, not more than 45 days from the date of the close of each quarterly billing period, with appropriate incentives for prompt payment.~~

(a) Invoices shall be issued within 60 days to the extent practicable, with appropriate incentives for prompt payment. In no event shall invoices be issued less frequently than on a quarterly basis.

(b) Invoices shall be mailed to the correct person for the potentially responsible party.

(c) Sufficient detail shall be included with each invoice, so that the potentially responsible party can relate the items on the invoice to the benefits received,

1 and additional details, including daily timesheet
2 personnel data, shall be made readily available.

3 (d) Invoices shall be supplemented with statements of
4 any changes in rates and a detailed justification for any
5 such changes.

6 (e) Invoices shall be reviewed for accuracy and
7 appropriateness by a member of the department staff
8 who has direct knowledge of the remediation action.

9 (f) Invoices shall be *reasonably* consistent with
10 expectations regarding costs, benefits, and outcomes
11 developed during the meet and confer process specified
12 in subdivision (a) of Section 25346.6, *if the department's*
13 *knowledge of site conditions or other factors which may*
14 *substantially impact the department's costs associated*
15 *with the site, have not changed significantly since the last*
16 *conference.*

17 (g) A process for the timely review and settlement of
18 any outstanding accounts shall be developed and
19 implemented.

20 25346.8. The department shall take all of the following
21 actions with regard to uncollectible accounts:

22 (a) Review all current outstanding receivables and
23 make an appropriate adjustment for estimated
24 uncollectible amounts, consistent with current
25 accounting practices and recognizing the present value
26 of future collection. The department may, if warranted,
27 write off or write down those receivable amounts.

28 (b) Maintain and report an analysis of outstanding
29 receivables and other control analyses.

30 (c) Consider whether to enter into a contract with a
31 private collection agency to collect substantially past-due
32 accounts and, for longer term receivables, consider
33 whether credit arrangements should be made with banks
34 or other institutions willing to assist in financing a
35 potentially responsible party's obligation for remediation.

36 25346.9. On or before June 1, 1998, the department, in
37 consultation with the Secretary for Environmental
38 ~~Protection, shall provide the Legislature with a written~~
39 *Protection, shall make available a written report*
40 *regarding the implementation of, and the effectiveness*

1 of, the changes required by this article on the
2 department's cost effectiveness, and the department's
3 recommendations for additional structural or program
4 changes that it believes should be implemented to further
5 increase the cost effectiveness of the department's site
6 mitigation program. *the changes required by this article.*

7 SEC. 2. Section 25360 of the Health and Safety Code
8 is amended to read:

9 25360. (a) Any costs incurred and payable from the
10 state account, the Site Remediation Account, or the
11 Hazardous Substance Cleanup Fund shall be ~~recovered~~
12 *recoverable* by the Attorney General, upon the request
13 of the department, from the liable person or persons. The
14 amount of any *remedial or removal action* costs ~~which~~
15 *that* may be recovered pursuant to this section, ~~for a~~
16 ~~remedial or removal action paid from the Hazardous~~
17 ~~Substance Cleanup Fund,~~ shall include the amount paid
18 ~~from that fund and interest on that any amount paid from~~
19 *the Hazardous Substance Cleanup Fund* calculated at a
20 rate equal to the interest rate of the bonds sold pursuant
21 to Article 7.5 (commencing with Section 25385) *and*
22 *interest on any amount paid from the state account or the*
23 *Site Remediation Account, calculated at the rate of*
24 *return earned on investment in the Surplus Money*
25 *Investment Fund pursuant to Section 16475 of the*
26 *Government Code.*

27 (b) ~~In addition to the costs specified in subdivision (a),~~
28 ~~the person or persons are liable to the department for~~
29 ~~administrative costs in an amount equal to 10 percent of~~
30 ~~the reasonable cost actually incurred, or five hundred~~
31 ~~dollars (\$500), whichever is greater.~~

32 (c) ~~A person who is liable for costs incurred at a site,~~
33 ~~which are payable from the state account, the Site~~
34 ~~Remediation Account, or the Hazardous Substance~~
35 ~~Cleanup Fund, shall have the liability reduced by any fee~~
36 ~~pursuant to this chapter that was actually paid by that~~
37 ~~person in connection with that site, including any fee paid~~
38 ~~pursuant to Section 25343.~~

39 (d)

1 (c) The amount of cost determined pursuant to this
2 section shall be recoverable at the discretion of the
3 department, either in a separate action or by way of
4 intervention as of right in an action for contribution or
5 indemnity. Nothing in this section deprives a party of any
6 defense he or she may have.

7 ~~(e)~~

8 (d) Moneys recovered by the Attorney General
9 pursuant to this section shall be deposited in the state
10 account, except that, if the costs incurred were paid from
11 the Hazardous Substance Cleanup Fund, the Attorney
12 General shall deposit the amounts recovered into the
13 Hazardous Substance Clearing Account. Moneys
14 deposited in the Hazardous Substance Clearing Account
15 pursuant to this section are available to pay the principal
16 of, and interest on, bonds sold pursuant to Article 7.5
17 (commencing with Section 25385).

18 SEC. 3. Section 25360.1 is added to the Health and
19 Safety Code, to read:

20 25360.1. Any monetary obligation to the department
21 pursuant to Chapter 6.5 (commencing with Section
22 25100) or this chapter shall be subject to interest from the
23 date of the demand at the same rate of return earned on
24 investment in the Surplus Money Investment Fund
25 pursuant to Section 16475 of the Government Code,
26 except the department may waive the interest if the
27 obligation is satisfied within 60 days from the date of
28 invoice.